

April 26, 2010

Mr. Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 East Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
2010 APR 27 AM 9:19
OFFICE OF GENERAL
COUNSEL

**Before the Federal Election Commission
Response to Complaint Contained in M.U.R. 6269**

A. Origin of Complaint

Complainant, Sam Lieberman, Chair of the Nevada State Democratic Party, alleges that Respondents Danny Tarkanian and Tarkanian for Senate have received an illegal in-kind contribution based on wholly unsupported assumptions and inferences and upon a misapplication of the relevant legal standards. Complainant alleges that the alleged campaign internet advertisement in question, depicted in Attachment A of the complaint, and which depicts Senator Harry Reid, presently a candidate for the U.S. Senate along with his son Rory Reid, presently a candidate for Governor of Nevada, violates the Federal Campaign Finance Act of 1971 ("the Act"), because it was allegedly produced by a nominee vendor of Respondents Danny Tarkanian and Tarkanian for Senate and Mike Montandon for Governor, and that said advertisement was, based on that fact alone, coordinated in violation of the specific requirements set forth for coordinated communications in 11 C.F.R. § 109.21. This response covers only those matters contained in Section B and C of the complaint (MUR 6269), and which directly affects Respondents Danny Tarkanian and Tarkanian for Senate.

- B. Complainant provides no evidence that alleged communication is what it purports to be, or that said alleged communication was in fact published and paid for by Montandon for Governor**

Complainant asserts that the alleged communication in question – an alleged internet advertisement – was produced by Steve Wark in his capacity as a consultant for the Mike Montandon for Governor campaign. The alleged advertisement in question however, and as depicted by complainant, provides no verifiable production attribution, no source citation, and no evidence that the depiction is in fact an advertisement paid for by the Montandon for Governor campaign. Furthermore, complainant provides no evidence sufficient to support the assertion that the alleged advertisement was ever published. Complainant merely provides a photocopied image, wholly alone and without publication context, and without any identifiable source information whatsoever except the alleged attribution, "Paid for by Montandon for Governor."

10044281828

- C. Complainant provides no evidence that said alleged communication was publicly distributed or disseminated in the clearly identified jurisdiction 90 days prior to an applicable election**

According to specific provisions set forth in 11 C.F.R. §(c)(4)(iii), the alleged violation must have occurred with reference to a communication "... publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before that clearly identified candidate's general, special or runoff election, or primary or preference election or nominating convention or caucus." Complainant asserts that said alleged communication occurred "on or about March 18, 2010" but provides no citation, reference, publication source or context or other evidence to support that assertion, nor does complainant provide any citation, reference, publication source or context or other evidence to support the contention that said alleged advertisement was in fact published in the jurisdiction as required.

- D. Complainant provides no evidence that a common vendor produced or contributed to the advertisement in question**

Respondent Tarkanian for Senate concedes that it has utilized the services of Steve Wark in his capacity as a well-known paid political consultant. Complainant however provides no supporting documentation to demonstrate that the alleged advertisement in question, if it did exist and was published in the jurisdiction within the prohibited time frame, was in fact produced by Steve Wark or his agents or with Steve Wark's knowledge, advice, input or consent. Complainant contends a lack of supporting evidence in paragraph 2 of Section B. of his complaint noting, "even if he did not help create this ad personally." The complainant's violation theory is thus based on an alleged unattributed advertisement having been unverifiably published in an unnamed source and allegedly produced by a common vendor.

- E. Complainant provides no evidence that alleged coordination, if it occurred, consisted of information that was material to the creation, production, or distribution of the alleged communication**

Complainant's alleged theory of coordination relies upon Steve Wark's alleged status as a common vendor pursuant to 11 CFR § 100.21(d)(4). In citing this provision however, complainant fails to take note of the specific materiality requirement of subsection (d)(4)(iii). Complainant fails to allege or demonstrate that any information allegedly obtained from respondent Danny Tarkanian and used by the vendor in creating the alleged advertisement was "material to the creation, production, or distribution" of the alleged communication. Complainant again provides no information regarding the alleged advertisement sufficient to make any determination about facts relating to its creation, production or distribution, or the materiality of any information that allegedly may have been conveyed by the common vendor to Respondent Mike Mentadon for Governor.

- F. Complainant provides no evidence that the information material to the creation, production, or distribution of the alleged communication used or conveyed by the alleged common commercial vendor was not obtained from a publicly available source

Complainant's alleged theory of coordination relies upon Steve Wark's alleged status as a common vendor pursuant to 11 CFR § 190.21(d)(4). In citing this provision however, complainant fails to take note of the specific requirement that, "This paragraph, (d)(4)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source." Complainant fails to allege or demonstrate that any information obtained from Respondents Danny Tarkanian and Tarkanian for Senate was allegedly used by the vendor in creating the alleged advertisement contained information from sources other than a public source. Complainant again provides no information regarding the alleged advertisement sufficient to make any determination about facts relating to its creation, production or distribution, and provides no specific allegation with regard to information which relates to the alleged advertisement's creation, production or distribution and which is not readily available from public sources or inconsistent with commonplace industry practice. Moreover, the alleged advertisement as depicted by complainant in Attachment A of his complaint contains only a picture of Clark County Commissioner and current gubernatorial candidate Rory Reid, and his father, Senator Harry Reid and both candidates' common last name; information readily available from public sources.

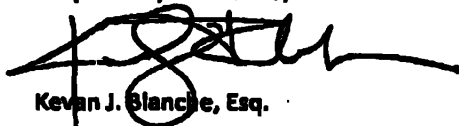
- G. Conclusion: There is no reasonable basis for the Commission to conclude that the complaint sets forth a possible violation of the Act

Complainant has failed to demonstrate that a communication existed, that such communication was publicly disseminated or that such communication if it existed was paid for by the Montandon for Governor campaign. Additionally, complainant has failed to demonstrate that such alleged communication, if it existed, was publicly disseminated in the referenced candidate's clearly identified jurisdiction, or that such alleged dissemination occurred within 90 days prior to an applicable election. Additionally, complainant has failed to demonstrate that said alleged advertisement was in any way produced by a common vendor or any other individual or organization having a relationship with Respondents Danny Tarkanian or the Tarkanian for Senate campaign. Additionally, complainant has failed to demonstrate that any communication occurred between the alleged common vendor and Tarkanian for Senate regarding the alleged publicly disseminated communication. Moreover, complainant has failed to demonstrate that said alleged communication, if it existed, was sufficient to meet the standard of 'coordinated' and that such alleged coordination contained information that was in fact 'material' to the production of the alleged communication. Lastly having failed to demonstrate the existence of any of the underlying facts which could lead the Commission to make a reasonable determination that sufficient basis exists to proceed with a further examination of these matters as they relate to Respondents Danny Tarkanian or Tarkanian for Senate, complainant fails to demonstrate that said alleged material

coordination forming the basis of the alleged communication contained information that was not readily obtainable from independent public sources.

For all the reasons outlined above, we contend that complainant has failed to demonstrate the existence of any of the underlying facts which could lead the Commission to make a reasonable determination that sufficient basis exists to proceed with a further examination of these matters as they relate to Tarkanian for Senate, and respectfully request that the Commission make a determination that there is no reason to believe a violation has occurred and excuse Respondents Danny Tarkanian and Tarkanian for Senate from further involvement in these matters.

Respectfully submitted,



Kevan J. Blanche, Esq.

Counsel

Danny Tarkanian

Tarkanian for Senate